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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,505	11/15/2001	Michael R. Flannery	P1768US00	3251
24333	7590	08/25/2005	EXAMINER	
GATEWAY, INC.			GAUTHIER, GERALD	
ATTN: SCOTT CHARLES RICHARDSON 610 GATEWAY DRIVE MAIL DROP Y-04 N. SIOUX CITY, SD 57049			ART UNIT	PAPER NUMBER
			2645	
DATE MAILED: 08/25/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/001,505	FLANNERY, MICHAEL R.	
Examiner	Art Unit		
Gerald Gauthier	2645		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) Responsive to communication(s) filed on 16 February 2005.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4)  Claim(s) 1-3,6,8-16,18,22,23,25-28 and 31-40 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3,6,8-16,18,22,23,25-28 and 31-40 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date .  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## DETAILED ACTION

### *Claim Objections*

1. **Claim(s) 26, 37, 38, 39 and 40** are objected to because of the following informalities: **claim(s) 26**, line 1 “claim 2” should be “claim 25”.  
**Claim(s) 37**, line 1 “cellular telephone” should be “apparatus”.  
**Claim(s) 38**, line 1, **claim(s) 39**, line 1 and **claim(s) 40**, line 1 have the same problem as **claim(s) 37** above. Correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claim(s) 1-3, 6, 8-16, 18, 22, 23, 25-28, 31-34 and 36-40** are rejected under 35 U.S.C. 102(e) as being anticipated by Thomas (US 2001/0049283 A1).

Regarding **claim(s) 1**, Thomas discloses a cellular telephone (FIG. 3) comprising:

a first transceiver for establishing cellular telephone calls (FIG. 3 and paragraph 0020) [The phone is equipped with the well known baseband 10a, RF 10b and processor 10c to permit a call within the public land mobile network];

a second transceiver for establishing a local voice channel (FIG. 3 and paragraphs 0020 and 0021) [The phone is equipped with a low power radio frequency module 1 which provides over the air voice communications];

a mixer for combining voice corresponding to the cellular telephone call with voice on the local voice channel to create a multi-party conference call (FIG. 3 and paragraph 0024) [The wireless user group must be in place at the phone to facilitate the multi-party conference call];

a menu identifying compatible devices within range of said second transceiver (FIG. 3 and paragraph 0024) [The wireless user group master is provided on the display a list of those devices from which it may be selected to join the conference call]; and

a menu driven interface driven by said menu for controlling establishment of voice channels by said second transceiver (FIG. 3 and paragraph 0024) [The wireless user group master selects devices to the conference call and a voice connection is established between the selected devices from the list to the wireless user group master by the module 1].

Regarding **claim(s) 2**, Thomas discloses an input device for selecting transceivers and identifying parties (paragraph 0024).

Regarding **claim(s) 3**, Thomas discloses the second transceiver implements a wireless communication protocol to establish a local voice channel (paragraph 0022).

Regarding **claim(s) 6**, Thomas discloses the second transceiver automatically identifies other compatible transceivers within range for potential voice channel establishment (paragraph 0024).

Regarding **claim(s) 8**, Thomas discloses the second transceiver receives requests from other devices to establish a voice channel (paragraph 0024).

Regarding **claim(s) 9**, Thomas discloses the voice channel is established with device having a compatible transceiver, wherein the device is selected from the group consisting of cellular telephones, two way radios, personal digital assistants, internet appliances and computer systems (paragraph 0023).

Regarding **claim(s) 10**, Thomas discloses the mixer comprises executing software (paragraph 0024).

Regarding **claim(s) 11 and 18**, Thomas discloses all the limitations of **claim(s) 11** as stated in **claim(s) 1** above and furthermore discloses identifying a third party device within a desired local area (paragraph 0024).

Regarding **claim(s) 12**, Thomas discloses establishing further voice channels with further parties, and mixing voice from the multiple voice channels (paragraph 0024).

Regarding **claim(s) 13**, Thomas discloses the third party device is invited to establish a voice channel prior to its establishment (paragraph 0024).

Regarding **claim(s) 14**, Thomas discloses the voice channel is established after acceptance by the third party device (paragraph 0024).

Regarding **claim(s) 15 and 22**, Thomas discloses the cellular phone is invited to establish the voice channel with the third party device (paragraph 0024).

Regarding **claim(s) 16 and 23**, Thomas discloses detecting third party devices within range of the second transceiver (paragraph 0025).

Regarding **claim(s) 25**, Thomas discloses all the limitations of **claim(s) 25** as stated in **claim(s) 1** rejection and furthermore discloses a housing (FIG. 3).

Regarding **claim(s) 26**, Thomas discloses the means for communicating with a first device via a cellular communications network comprising a cellular telephone transceiver circuit structure (paragraph 0020).

Regarding **claim(s) 27**, Thomas discloses the means for communicating with a second device via a local communications link comprising a radio-frequency transceiver circuit structure (paragraph 0020).

Regarding **claim(s) 28**, Thomas discloses the means for combining communications with the first and second devices comprising a mixer circuit structure (paragraph 0024).

Regarding **claim(s) 31 and 37**, Thomas discloses a cellular telephone wherein identification codes for said compatible devices are preprogrammed into the cellular telephone so as to enable a name of a person to be associated with each said compatible device (paragraph 0024).

Regarding **claim(s) 32 and 38**, Thomas discloses a cellular telephone further comprising a function enabling entry of a code for each person (paragraph 0024).

Regarding **claim(s) 33 and 39**, Thomas discloses a cellular telephone wherein the menu includes a list of potential callers to be added to the conference call (paragraph 0024).

Regarding **claim(s) 34 and 40**, Thomas discloses a cellular telephone further comprising a function for selecting desired callers from said list (paragraph 0024).

Regarding **claim(s) 36**, Thomas discloses an apparatus further comprising:

a menu identifying compatible devices within range of said second transceiver (paragraph 0024); and

a menu driven interface driven by said menu for controlling establishment of voice channels (paragraph 0024).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claim(s) 35** is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas in view of Irvin (US 6,658,264 B1).

Regarding **claim(s) 35**, Thomas as applied to **claim(s) 1** above differs from **claim(s) 35** in that it fails to disclose a microphone and speaker coupled to said mixer such that sound generated at the microphone is not played at the speaker.

However, Irvin, in the same field of endeavor, teaches a cellular telephone further comprising a microphone and speaker coupled to said mixer such that sound generated at the microphone is not played at the speaker (FIG. 2 and column 5, lines 34-50).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Thomas using the cellular telephone as taught by Irvin.

This modification of the invention enables the system to disclose a microphone and speaker coupled to said mixer such that sound generated at the microphone is not played at the speaker so that the user would benefit from a less noisy conference call.

### ***Response to Arguments***

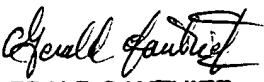
7. Applicant's arguments with respect to **claim(s) 1-3, 6, 8-16, 18, 22, 23, 25-28, and 31-40** have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald Gauthier whose telephone number is (571) 272-7539. The examiner can normally be reached on 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**GERALD GAUTHIER**  
**PATENT EXAMINER**

Gerald Gauthier  
Examiner  
Art Unit 2645

g.g.

August 10, 2005